

d. City's Calling Data

AT&T presented evidence of the amount of long distance calls made to the Meridian Exchange from the town of Morgan, as a long distance customer. AT&T argues that this statistical data does not support a strong community of interest through usage of telephone service. The ALJ finds this argument to be misleading. As previously discussed, the Commission's rules and PURA do not require statistical data in a proceeding such as the one involved in this petition. In addition, the evidence that AT&T relies upon are the telephone bills only for the town of Morgan, as opposed to its residents. Mayor Vandiver testified that the town of Morgan placed calls mainly to the Meridian Exchange due to the county seat's location. The ALJ does not find the calling patterns of the town of Morgan to be indicative of the general population in the Morgan Exchange. Instead, Mayor Vandiver's testimony is more credible concerning the community of interest between the exchanges.

4. **Recommendation**

The ALJ concludes that a community of interest exists between the Morgan Exchange and the Meridian Exchange. The exchanges are contiguous; thus, under Texas law, there is a *per se* community of interest. In addition, the petitioners proved a community of interest with the Meridian Exchange in the following ways: affirmative vote of 82.1 percent of the subscribers returning ballots, commonality of local government, and common utilization as a commercial center.

B. Community of Interest Between the Morgan and Clifton Exchanges

1. **Description of Petition**

The Clifton Exchange is the second exchange with which the Morgan Exchange requests to have ELCS. As previously stated, the Morgan Exchange is served by Comtel Telephone Company of Texas, Inc. (GTE), and it is in the Dallas LATA. Petitioners Ex. 2, ¶16 & 17. The Clifton Exchange is served by Central Telephone Company (Centel), and is located in the Waco LATA. *Id.* The testimony of Mayor Vandiver was presented to support the petition.

The town of Morgan has a population of 451. The town of Morgan is 20 miles from the town of Clifton, which has a population of 3,195. *Id.* at ¶8. The exchanges of Morgan, Clifton, and Meridian are all within Bosque County. The Clifton and Morgan Exchanges share a common boundary. *Id.* at ¶6.

2. *Per Se* Standard

The southeasterly corner of the Morgan Exchange and the northern portion of the Clifton Exchange share a common boundary. The easterly side of the Meridian Exchange is contiguous with the westerly edge of the Clifton Exchange; therefore, the three exchanges share boundaries. Because the two exchanges are contiguous, there is a *per se* community of interest under PURA and P.U.C. SUBST. R. 23.49(c).

3. Additional Findings of Community of Interest

a. Affirmative Vote of Subscribers

The petition filed before the Commission included the signatures of 45 subscribers in the Morgan Exchange. The signatories had notice that the non-optional service included a surcharge of \$3.50 for residential customers and \$7.00 for business customers. An affirmative vote of 76.7 percent of those subscribers that voted in the balloting favored expanding Morgan's local calling scope to the Clifton Exchange. The ballots also stated that the service was non-optional and specified the costs for the service.

b. Commercial Center

As previously discussed, the town of Morgan does not have a business district. The Mayor of Morgan testified that the majority of the citizens went to the towns of Meridian or Clifton for goods and services. Tr. 75. The towns of Meridian and Clifton represent the commercial centers for those who live in the Morgan Exchange. As with the Meridian Exchange, AT&T argues that other towns could

have more of a community of interest with Morgan than the town of Clifton. The credible evidence supports a finding that the town of Clifton is a commercial center for the Morgan Exchange.

c. Hospitals and Medical Providers

The town of Clifton has the only hospital in Bosque County; it is the primary hospital relied upon by residents of the Morgan Exchange for inpatient care. Petitioners Ex. 2, ¶24. Also the family physicians for most of the residents in Morgan are affiliated with the Clifton Medical Clinic in the town of Clifton. The evidence of the use of hospitals and medical providers in the town of Clifton is sufficient to show a community of interest between the two exchanges.

d. Employment

Based upon the credible testimony of Mayor Vandiver, the town of Clifton is the largest employment center in the county. AT&T states that Mayor Vandiver was not aware of the employment opportunities in his own exchange. Under cross-examination, Mayor Vandiver stated that he was unaware of the number of people within the Morgan Exchange employed by dairies, farms, etc., and that he did not know the exact number of persons employed in the Clifton Exchange. Yet, he did testify that the town of Clifton is the employment center for citizens in the Morgan Exchange. There is no contrary evidence in the record. Mayor Vandiver made a *prima facie* case that the town of Clifton is the employment center, and there is no evidence to contradict his testimony. Based upon his knowledge of the community, it is reasonable to determine that most of the employment opportunities are in the Clifton Exchange.

e. City's Calling Data

As with the petition for ELCS between the Morgan and Meridian Exchanges, AT&T attacks the petition on the basis that the only statistical data in evidence does not support a strong community of interest through usage of telephone service. Again, the issue involves the number of calls between the town of Morgan, as a telecommunications customer, and the Clifton Exchange. For the reasons stated

in Section VIIA.3.d., the ALJ rejects AT&T's arguments based upon the calling data of the city as a customer.

4. Recommendation

The ALJ concludes that a community of interest exists between the Morgan Exchange and the Clifton Exchange. The exchanges are contiguous; thus, under Texas law, there is a *per se* community of interest. In addition, the petitioners proved a community of interest with the Clifton Exchange in the following ways: affirmative vote of 82.1 percent of the subscribers returning ballots, utilization as a commercial center, common utilization of the hospital and medical providers; and, common utilization as an employment center.

VIII. Docket No. 12413

A. Community of Interest Between the Blessing and Markham Exchanges

1. Description of Petition

Docket No. 12413 involves a petition by the Blessing Exchange for ELCS between it and two other exchanges. One of the requests involves the Markham Exchange and the other involves the Bay City Exchange, which will be discussed below in Section VIILB. The Blessing and Markham Exchanges are served by GTE. Petitioners Ex. 6, ¶10. The Blessing Exchange is in the Corpus Christi LATA, and the Markham Exchange is in the Houston LATA. *Id.* at ¶18. In support of the petition, the petitioners presented the testimony of County Commissioner E. R. Vacek, who has lived within the Blessing Exchange since the age of seven. *Id.*

The towns of Blessing, Midfield, and Elmaton are within the Blessing Exchange. The three towns make a triangle with Midfield at the northern point, Elmaton at the southeasterly point, and Blessing at the southwesterly point. The town of Blessing has a population of 500, and is located four miles from Midfield (population 60) and six miles from Elmaton (population 40). Midfield and Elmaton are ten to 12 miles in distance from each other. Tr. 232. The town of Markham is 12 miles from the town of Blessing, and has a population of 600 to 700. Tr. 233. The Markham Exchange is located in

Matagorda County and all but a small portion of the Blessing Exchange is located within the same county. The Blessing and Markham Exchanges are contiguous. Petitioners Ex. 6, ¶11.

2. *Per Se* Standard

As stated above, the two exchanges of Blessing and Markham are contiguous. Because the two exchanges are contiguous, there is a *per se* community of interest under PURA and P.U.C. SUBST. R. 23.49.(c).

3. Additional Findings of Community of Interest

a. Affirmative Vote of Subscribers

The petition filed before the Commission included the signatures of 227 subscribers in the Blessing Exchange. *Id.* at ¶13. The signatories had notice that the non-optional service included a surcharge of \$3.50 for residential customers and \$7.00 for business customers. An affirmative vote of 77.6 percent of those subscribers that voted in the balloting favored expanding Blessing's local calling scope to the Markham Exchange. *Id.* The ballots also stated that the service was non-optional and specified the costs for the service.

b. Local Government

The Blessing and Markham communities are unincorporated. *Id.* at ¶6 & 7. Both areas are located within the same county precinct. *Id.* at ¶8. Both are served by the same county commissioner, justice of the peace, and constable. *Id.* at ¶29. The three towns within the Blessing Exchange rely upon the county sheriff located in the town of Bay City or the constable in the town of Markham for its law enforcement. Tr. 235. The towns within the Blessing Exchange have fire departments and ambulance service within the areas. *Id.* In order to reach 911, the calls go to Bay City. *Id.* The evidence of commonality of local government is sufficient to show a community of interest between the two exchanges.

c. Schools

The children in the Blessing Exchange attend schools in the Tidehaven Independent School District. Petitioners Ex. 6, ¶27. The Markham Exchange is also within this school district. There is an elementary school in the towns of Blessing and Markham. The junior high school and high school are located in the town of Elmaton. All children in grades above elementary school who are from Markham, Blessing, Midfield, and Elmaton attend these two schools. Lastly, the administrative buildings for the district are located in Elmaton. Therefore, parents or children within the Markham Exchange must call into the Blessing Exchange to reach the junior high school, high school, or administrators.

AT&T argues that the evidence of the schools is not sufficient to find that a community of interest exists. The ALJ disagrees that the petitioners have failed to show a community of interest. The evidence is clear that all of the schools and administration buildings, except one elementary school in the town of Markham, are located in the Blessing Exchange. The evidence also is clear that children in the Markham Exchange are in the same school district as the towns in the Blessing Exchange. The sharing of a common school district is compelling evidence of a community of interest; otherwise, the two communities would have separate districts.

4. Recommendation

The ALJ concludes that a community of interest exists between the Blessing Exchange and the Markham Exchange. The two exchanges are contiguous; thus, under Texas law, there is a *per se* community of interest. In addition, the petitioners proved a community of interest with the Markham Exchange in the following ways: affirmative vote of 77 percent of the subscribers returning ballots; commonality of local government; and commonality of the school district.

B. Community of Interest Between the Blessing and Bay City Exchanges**1. Description of Petition**

The Bay City Exchange is the second exchange with which the Blessing Exchange requests to have ELCS. As previously stated, the Blessing Exchange is served by GTE, and is in the Corpus Christi LATA. Petitioners Ex. 6, ¶10 & 18. The Bay City Exchange is served by SWB, and is in the Houston LATA. *Id.* The boundary between the Corpus Christi LATA and the Houston LATA follows the Colorado River. *Id.* at ¶20.

The specific characteristics of the towns in the Blessing Exchange were previously discussed. The town of Bay City has a population of 23,000 to 25,000, and is located about 18 miles from the town of Blessing. Tr. 233. The Bay City Exchange is located in Matagorda County and all but a small portion of the Blessing Exchange is located within the same county. The Blessing Exchange is within three miles of the Bay City Exchange. Petitioners Ex. 6, ¶12.

2. *Per Se* Standard

The eastern side of the Blessing Exchange and the western edge of the Bay City Exchange are within three miles of each other. The two exchanges are within 22 miles distance as required by PURA and P.U.C. SUBST. R. 23.49(c). Thus, under Texas law, there is a *per se* community of interest.

3. Additional Findings of Community of Interest**a. Affirmative Vote of Subscribers**

The petition filed before the Commission included the signatures of 227 subscribers in the Blessing Exchange. The signatories had notice that the non-optional service included a surcharge of \$3.50 for residential customers and \$7.00 for business customers. An affirmative vote of 81 percent of those subscribers that voted in the balloting favored expanding Blessing's local calling scope to the Bay

City Exchange. The ballots also stated that the service was non-optional and specified the costs for the service.

b. Local Government

The town of Bay City is the county seat of Matagorda County. *Id.* at ¶25. Over 90 percent of the subscribers in the Blessing Exchange reside in Matagorda County. The county clerk, county and district courts, the commissioner's court, the county tax collector-assessor, the appraisal district, and the sheriff's office are located in the town of Bay City. As previously discussed, residents of the Blessing Exchange rely upon the county sheriff and the use of 911 from the Bay City Exchange. The evidence of commonality of local government is sufficient to show a community of interest between the two exchanges.

c. Commercial Center

The Bay City Exchange is the commercial center for the towns within the Blessing Exchange. Residents of the Blessing Exchange rely upon the town of Bay City for groceries, clothing, hardware, dry goods, banking services, and professional services.

AT&T argues that there exists a busy and varied commercial community within the Blessing Exchange. The evidence shows that the following services or businesses, among others, are within the exchange: video stores, gas stations, feed stores, convenience stores, laundromats, beauty salons, restaurants establishments, grass farms, a hotel, community center, an aged library, a school district, an ambulance service, and a fire department. While the Blessing Exchange might appear to have a significant business district in contrast to the Troup and Morgan Exchanges, the evidence still shows that the Bay City Exchange is a commercial center for the Blessing Exchange. According to Mr. Vacek, the citizens of the Blessing Exchange utilize lawyers, physicians, opticians, pharmacists, dentists, accountants, architects, banks, insurance agents, and Realtors® from the Bay City Exchange. He also testified that most consumable goods are bought in the Bay City Exchange.

d. Hospitals and Medical Providers

The only hospital in Matagorda County is in the town of Bay City. Petitioners Ex. 6, ¶23. Likewise, the primary care physicians for the Blessing area are in Bay City. *Id.* There are no doctors or dentists located in the Blessing Exchange. Tr. 234. AT&T argues that currently there is a hospital in Palacios, which is 11 miles from the town of Blessing. AT&T states that although the hospital in Bay City is the only one located within the same county as the Blessing Exchange, the hospital in Palacios is closer. While this might be true, just because it is closer does not necessarily mean that it is the primary hospital for residents of the Blessing Exchange. In fact the evidence shows that the Palacios hospital is in the process of being closed. Tr. 226. The evidence also shows that the Palacios hospital is used for trauma cases to stabilize patients prior to a transfer to the Bay City hospital. *Id.* at 227. The credible evidence supports a determination that the hospital located in the town of Bay City is the main facility for health care for those residing in the Blessing Exchange.

e. Employment

Businesses or government agencies located in the Bay City Exchange employ most of the working population of the Blessing Exchange. Petitioners Ex. 6, ¶24. The parents employed in the town of Bay City must call or receive calls from the Blessing Exchange to contact either children, teachers, or administrators within the school district.

AT&T relies upon the businesses located in the Blessing Exchange as evidence that a significant number of citizens are employed within Blessing. While the evidence shows that there are businesses in the Blessing Exchange, there is no testimony on the job opportunities from those businesses. Nor is there evidence on whether the jobs are filled by persons living outside the exchange. Yet, there is evidence from Mr. Vacek that most of the employment opportunities are within the Bay City Exchange. Mr. Vacek was a credible witness, and there is no evidence to contravert his statements.

4. Recommendation

The ALJ concludes that a community of interest exists between the Blessing Exchange and the Bay City Exchange. The exchanges are within a 22 mile distance; thus, under the standards in Texas, there is a *per se* community of interest. In addition, the petitioners proved a community of interest with the Bay City Exchange in the following ways: affirmative vote of 81 percent of the subscribers returning ballots; commonality of local government; utilization as a commercial center; reliance upon hospital and medical providers; and, utilization as a employment center.

X. Conclusion

The three petitioning exchanges have satisfied not only the *per se* standards for a community of interest, but in addition provided evidence of a strong community of interest between them and the petitioned exchanges. For the reasons stated within the Proposed Interim Order, the ALJ recommends that the Commission enter an interim order finding that a community of interest exists.

XL Findings of Fact and Conclusions of Law

The ALJ recommends adoption of the following findings of fact and conclusions of law.

A. Findings of Fact

1. The three expanded toll-free local calling service (ELCS) petitions that are the subject of this Interim Order request non-optional "to and from calling" between the following exchanges: 1) the Troup Exchange and the Tyler Exchange; 2) the Morgan Exchange and the exchanges of Meridian and Clifton; and, 3) the Blessing Exchange and the exchanges of Bay City and Markham.

2. The processes for petitioning and balloting included notice that the service would have a fee of up to \$3.50 for residential and \$7.00 for business customers on a non-optional basis.

3. The three petitions were joined for purposes of hearing.
4. Judge Harold H. Greene established the LATA boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Cas (CCH) §66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)
5. A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene.
6. Judge Greene has relied upon the following issues for SWB or GTE to obtain a waiver of his orders: impact on competition; whether the calling plan has the attributes of a long distance toll call; and whether a community of interest exist between the two exchanges.
7. On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Act of May 11, 1993, 73rd Leg. R.S., ch.271, 1993 Tex. Sess. Law Serv. 1276 (Vernon)(to be codified as an amendment to TEX. REV. CIV. STAT. ANN., Art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.
8. The statute and the rule referred to in Finding of Fact No. 7 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.
9. While Judge Greene has not articulated a criteria for determining a community of interest, the evidence indicates that he requires a showing of community of interest in order to grant a waiver of the

prohibition in the MFJ against the provision of interLATA transport by SWB and G. In recommending approval of various waivers, the DOJ has relied upon an affirmative vote of responding subscribers and whether the two exchanges share such needs as local government employment, shopping, and use of educational and medical services.

10. The standard contained within P.U.C. SUBST. R. 23.49(b)(2) requires mandatory use of call data and demographic data for proof of a community of interest between two exchanges. Because the requirement for such data applies specifically to Expanded Area Service (EAS) petitions, such data is not required in ELCS proceedings.

11. The Commission contemplated interLATA waivers in adopting P.U.C. SUBST. R. 23.49(b)(2), thus, it was aware of issues relating to the implications of an interLATA boundary application when adopting the rule.

12. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. The percentage of affirmative votes from those subscribers returning ballots is a compelling showing of a community of interest. This factor can and should be considered with the same weight as other factors, such as the sharing of local government services, schools, employment, and commercial centers.

13. On September 22, 1993, the Troup Exchange filed a petition for ELCS between it and the Tyler Exchange. The petition ultimately became Docket No. 12335.

14. The Troup Exchange is served by United Telephone Company of Texas, Inc. (United), and it is in the Dallas LATA. The Tyler Exchange is served by SWB, and it is in the Longview LATA.

15. The parties to the proceeding were the petitioning Troup Exchange, United, SWB, AT&T Communications of the Southwest, Inc. (AT&T), and General Counsel. The hearing on the merits convened on August 24, 1994, and was adjourned on August 25, 1994. There is no statutory deadline for this proceeding.

16. The town of Troup has a population of 1,640, and is the only municipality in the Troup Exchange. The entire exchange contains 2,000 persons. The town of Troup is 17 miles from the City of Tyler, which has a population of 75,000. At the closest point, the Troup Exchange is within two miles of the Tyler Exchange.

17. In addition to the Troup Exchange, the Bullard, Lake Palestine East, and Chandler Exchanges are in the Dallas LATA. Calls between these exchanges and the Tyler Exchange are not subject to the MFJ because local calling between the exchanges was in existence prior to the MFJ. This issue is not relevant to whether a community of interest exist between Troup and Tyler.

18. The petition filed before the Commission included the signatures of 156 subscribers in the Troup Exchange. An affirmative vote of 83.2 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Troup Exchange to the Tyler Exchange.

19. The Tyler Exchange and over 80 percent of the subscribers in the town of Troup reside in Smith County. Thus, the City of Tyler is the predominant county seat for the area. The town of Troup has its own police and fire department. Its ambulance service is dispatched from the Tyler Exchange by the East Texas EMS.

20. The town of Troup has various businesses within it, and it has one grocery store and one bank. Most stores, professional services, and entertainment providers are located in the Tyler Exchange. The City of Tyler represents the commercial center for those who live in the Troup Exchange.

21. The City of Tyler has three major hospitals, while the Troup Exchange does not have a hospital nor a laboratory. The closest hospital other than in the Tyler Exchange is located in Jacksonville, which is 20 miles from the town of Troup. The citizens of Troup utilize the hospitals in the Tyler Exchange

for provision of inpatient and traumatic care, instead of the hospital in Jacksonville. The town of Troup has two doctors with limited practices; there are no specialist physicians in the Troup Exchange. There are two dentists in the town of Troup.

22. The children in the Troup Exchange attend schools in the Troup Independent School District. The district consist of elementary, middle, and high schools.

23. Businesses or government agencies located in the Tyler Exchange employ most of the working population of the Troup Exchange. Parents must call between the exchanges to contact either children, teachers, or administrators within the school district, and vice versa.

24. There is a community of interest between the Troup Exchange and the Tyler Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Tyler Exchange in the following ways: affirmative vote of 83.2 percent of the subscribers returning ballots; commonality of local government; common use as a commercial center; reliance upon the hospitals and medical providers; common use as an employment center, and location of schools within different exchanges from the employment center.

DOCKET NO. 12335 - PETITION OF THE MORGAN EXCHANGE

25. In Docket No. 12335, the Morgan Exchange filed a petition for ELCS between it and the Meridian and Clifton Exchanges on September 27, 1993.

26. The parties to the proceeding were the petitioning Morgan Exchange, Contel of Texas, Inc. (GTE), SWB, Central Telephone Company, AT&T, Representative Dr. J. Bernard Erickson, and General Counsel. The hearing on the merits convened on August 24, 1994, and was adjourned on August 25, 1994. There is no statutory deadline for this proceeding.

27. The town of Morgan does not have a business district. In fact, it does not have grocery stores, physicians, dentists, auto dealerships, or other professional services. The town does have two family-run, gas stations that provide limited groceries. The towns of Meridian and Clifton represent the commercial centers for those who live in the Morgan Exchange.
28. Although the town of Morgan has a variety of services to offer its own residents, these few services would not sustain the needs of the citizens of Morgan.
29. The towns of Glen Rose, Hillsboro, and Cleburne do not have a community of interest with the Morgan Exchange.
30. The calling patterns of the town of Morgan, as a customer of long distance service, is not indicative of the general population in the Morgan Exchange. Therefore, it does not constitute evidence relevant to the issue of community of interest.

Morgan Exchange to the Meridian Exchange

31. The Morgan Exchange is served by Contel Telephone Company of Texas, Inc. (GTE), and it is in the Dallas LATA. The Meridian Exchange is served by SWB, and is located in the Waco LATA.
32. The town of Morgan has a population of 451. The town of Morgan is 7 miles from the town of Meridian, which has a population of 1,390. The two exchanges share a common boundary.
33. The petition filed before the Commission included the signatures of 45 subscribers in the Morgan Exchange. An affirmative vote of 82.1 percent of those subscribers that voted in the balloting favored expanding the Morgan Exchange's local calling scope to the Meridian Exchange.
34. The two exchanges are in Bosque County, and the town of Meridian is the county seat. The appraisal district office, the tax office, the county senior citizens office, and the courts are located in the Meridian Exchange. The town of Morgan does not have a police department, but depends upon the

sheriff's department in the Meridian Exchange for law enforcement. The ambulance service also is deployed from the Meridian Exchange. There is a volunteer fire department in the Morgan Exchange.

35. Although the town of Morgan has its own fire department, city hall, water department, and school district, the evidence is uncontraverted that all county services, as well as law enforcement services, are located within the Meridian Exchange. These functions are equally vital to the community within the Morgan Exchange.

36. There is a community of interest between the Morgan Exchange and the Meridian Exchange. The exchanges are contiguous. In addition, the petitioners proved a community of interest with the Meridian Exchange in the following ways: affirmative vote of 82.1 percent of the subscribers returning ballots, commonality of local government, and common utilization as a commercial center.

Morgan Exchange to the Clifton Exchange
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37. The Morgan Exchange is served by Contel Telephone Company of Texas, Inc. (GTE), and it is in the Dallas LATA. The Clifton Exchange is served by Central Telephone Company (Centel), and is located in the Waco LATA.

38. The town of Morgan has a population of 451. The town of Morgan is 20 miles from the town of Clifton, which has a population of 3,195. Morgan, Clifton, and Meridian are all within Bosque County, Texas. The two exchanges share a common boundary.

39. The petition filed before the Commission included the signatures of 45 subscribers in the Morgan Exchange. An affirmative vote of 76.7 percent of those subscribers that voted in the balloting favored expanding Morgan's local calling scope to the Clifton Exchange.

40. The town of Clifton has the only hospital in Bosque County, it is the primary hospital relied upon by residents of the Morgan Exchange for inpatient care. Also, the family physicians for most of the residents in the Morgan Exchange are affiliated with the Clifton Medical Clinic in the town of Clifton.

41. The town of Clifton is the largest employment center in the county.

42. There is a community of interest between the Morgan Exchange and the Clifton Exchange. The exchanges are contiguous. In addition, the petitioners proved a community of interest with the Clifton Exchange in the following ways: affirmative vote of 82.1 percent of the subscribers returning ballots, common utilization as a commercial center, common reliance upon hospital and medical providers; and, common utilization as an employment center.

DOCKET NO. 12413 PETITION OF THE BLESSING EXCHANGE

43. In Docket No. 12413, the Blessing Exchange filed a petition for ELCS between it and the Markham and Bay City Exchanges on October 18, 1993.

44. The parties to the proceeding were the petitioning Blessing Exchange, SWB, GTE, AT&T, Representative D.R. "Tom" Uher, and General Counsel. The hearing on the merits convened on August 24, 1994, and was adjourned on August 25, 1994. There is no statutory deadline for this proceeding.

45. The towns of Blessing, Midfield, and Elmaton are within the Blessing Exchange. The three towns make a triangle, with Midfield at the northern point, Elmaton at the southeasterly point, and Blessing at the southwesterly point. The town of Blessing has a population of 500, and is located four miles from Midfield (population 60) and six miles from Elmaton (population 40). Midfield and Elmaton are ten to 12 miles in distance from each other.

Blessing Exchange to the Markham Exchange

46. The Blessing and Markham Exchanges are served by GTE. The Blessing Exchange is in the Corpus Christi LATA, and the Markham Exchange is in the Houston LATA.
47. The town of Markham is 12 miles from the town of Blessing, and has a population of 600 to 700. The Markham Exchange is located in Matagorda County and all but a small portion of the Blessing Exchange is located within the same county. The Blessing and Markham Exchanges are contiguous.
48. The petition filed before the Commission included the signatures of 227 subscribers in the Blessing Exchange. An affirmative vote of 77.6 percent of those subscribers that voted in the balloting favored expanding Blessing's local calling scope to the Markham Exchange.
49. The Blessing and Markham communities are unincorporated. Both areas are located within the same county precinct. Both are served by the same county commissioner, justice of the peace, and constable. The three towns within the Blessing Exchange rely upon the county sheriff located in the town of Bay City or the constable in the town of Markham for its law enforcement. The towns in the Blessing Exchange have fire departments and ambulance service within the areas. In order to reach 911, the calls go to the Bay City Exchange.
50. The children in the Blessing Exchange attend schools within the Tidehaven Independent School District. The children within the Markham Exchange are also within this school district. There is an elementary school in Blessing and Markham. The junior high school and high school are located in Elmaton. All children in grades above elementary school who are from Markham, Blessing, Midfield, and Elmaton attend these schools. The administrative buildings for the district are located in Elmaton. Therefore, parents or children within the Markham Exchange must call into the Blessing Exchange to reach the junior high school, high school, or administrators.

51. There is a community of interest between the Blessing Exchange and the Markham Exchange. The two exchanges are contiguous. In addition, the petitioners proved a community of interest with the Markham Exchange in the following ways: affirmative vote of 77 percent of the subscribers returning ballots; commonality of local government; and commonality in the school district.

Blessing Exchange to the Bay City Exchange

52. The Blessing Exchange is served by GTE, and is in the Corpus Christi LATA. The Bay City Exchange is served by SWB, and is in the Houston LATA. The boundary between the Corpus Christi LATA and the Houston LATA follows the Colorado River.

53. The town of Bay City has a population of 23,000 to 25,000, and is located about 18 miles from Blessing. The Bay City Exchange is located in Matagorda County and all but a small portion of the Blessing Exchange is located within the same county. The Blessing Exchange is within three miles of the Bay City Exchange.

54. The petition filed before the Commission included the signatures of 227 subscribers in the Blessing Exchange. An affirmative vote of 81 percent of those subscribers that voted in the balloting favored expanding Blessing's local calling scope to the Bay City Exchange.

55. The town of Bay City is the county seat of Matagorda County. Over 90 percent of the subscribers in the Blessing Exchange reside in Matagorda County. The county clerk, county and district courts, the commissioner's court, the county tax collector-assessor, the appraisal district and the sheriff's office are located in the Bay City Exchange. Residents of the Blessing Exchange rely upon the county sheriff and the use of 911 from the Bay City Exchange.

56. The town of Bay City is the commercial center for the towns within the Blessing Exchange. Residents of the Blessing Exchange rely upon the Bay City Exchange for groceries, clothing, hardware, dry goods, banking services, and professional services. Although there exists a commercial community within the Blessing Exchange, the Bay City Exchange is the commercial center for the Blessing Exchange. The citizens of the Blessing Exchange utilize lawyers, physicians, opticians, pharmacists,

dentists, accountants, architects, banks, insurance agents, and Realtors® from the Bay City Exchange. Also most consumable goods are bought in the Bay City Exchange.

57. The only hospital in Matagorda County is in the town of Bay City. Likewise, the primary care physicians for the Blessing area are in the Bay City Exchange. There are no doctors or dentists in the Blessing Exchange. Although there is a hospital in Palacios, which is 11 miles from the town of Blessing, it is in the process of being closed. It is also only used for trauma cases to stabilize patients prior to a transfer to the Bay City hospital.

58. Businesses or government agencies located in the Bay City Exchange employ most of the working population of the Blessing Exchange. The parents employed in the Bay City Exchange must call or receive calls from the Blessing Exchange to contact either children, teachers, or administrators within the school district.

59. There is a community of interest between the Blessing Exchange and the Bay City Exchange. The exchanges are within a 22-mile distance. In addition, the petitioners proved a community of interest with the Bay City Exchange in the following ways: affirmative vote of 81 percent of the subscribers returning ballots; commonality of local government; common utilization as a commercial center; common reliance upon hospital and medical providers; and, common utilization as an employment center.

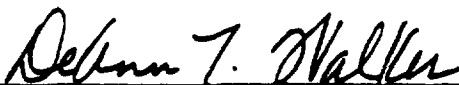
B. Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c, §§ 16, 18, 27, 35, 37, 50, and 93A (Vernon Supp. 1994).
2. The standards for community of interest for ELCS in Texas are established in §93A(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).

3. Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.
4. To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 93A(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact Nos. 16, 32, 38, 47, and 53, each of the petitioning exchanges satisfy the requirement.
5. P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
6. An ELCS docket that has the two exchanges within 22 miles of each other or which are contiguous to each other constitutes a *per se* showing of community of interest. Judge Greene requires, however, a greater showing of community of interest in order to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.
7. A community of interest standard similar to P.U.C. SUBST. R. 23.49(b)(2) is not applicable to proceedings involving ELCS.
8. The standards contained within § 93A(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.

9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 93A of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange.

Respectfully submitted,



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

APPROVED this 25th day of October 1994.



JOHN M. RENFROW
DIRECTOR OF HEARINGS

ATTACHMENT A

Parties to the proceedings include the following:

Docket No. 12335: the petitioning Troup Exchange
United Telephone Company of Texas, Inc.
SWB
AT&T
General Counsel

Docket No. 12413: the petitioning Blessing Exchange
SWB
GTE
AT&T
Representative D.R. "Tom" Uher
General Counsel

Docket No. 12922: the petitioning Morgan Exchange
Comtel of Texas, Inc.
SWB
Central Telephone Company
/ AT&T
Representative Dr. J. Bernard Erickson
General Counsel

DOCKET NO. 12413

**PETITION OF THE CITY OF
BLESSING/ELMATON/MIDFIELD
EXCHANGE FOR LOCAL
CALLING SERVICE TO THE BAY
CITY AND MARKHAM
EXCHANGES**

CONCLUSION

PUBLIC UTILITY COMMISSION

OF TEXAS

REVISED PROPOSED INTERIM ORDER

In open meeting at its offices in Austin, Texas, the Public Utility Commission of Texas (Commission) finds that this docket was processed by the presiding officer in accordance with applicable statutes and Commission rules. The Proposal for Interim Order, containing findings of fact and conclusions of law, is **ADOPTED** and **INCORPORATED** by reference into this Interim Order.

The Commission further issues the following Order:

1. The petitioners in the petition filed by the Blessing/Elmaton/Midfield Exchange for expanded local calling service to the Bay City and Markham Exchanges have shown a community of interest between the exchanges.
2. Within thirty (30) days of this Interim Order, Southwestern Bell Telephone Company (SWB) is **DIRECTED** to file a request for waiver of the Modified Final Judgment before Judge Harold H. Greene.
3. Within thirty (30) days of this Interim Order, GTE Southwest, Inc. (GTE) is **DIRECTED** to file a request for waiver of the Consent Decree before Judge Harold H. Greene.

4. Within thirty (30) days of the receipt of the ruling by Judge Greene, SWB and GTE are DIRECTED to file Judge Greene's judgments in this docket.

SIGNED AT AUSTIN, TEXAS the _____ day of November 1994.

PUBLIC UTILITY COMMISSION OF TEXAS

ROBERT W. GEE, CHAIRMAN

KARL R. RABAGO, COMMISSIONER

SARAH GOODFRIEND, COMMISSIONER

ATTEST:

JOHN M. RENFROW
SECRETARY OF THE COMMISSION